

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

December 12, 2011 Session

JIM SINGLEY v. CHEROKEE INSURANCE COMPANY

Appeal from the Chancery Court for Henderson County
No. 24127 James F. Butler, Chancellor

No. W2011-00862-WC-R3-WC - Mailed March 20, 2012; Filed April 23, 2012

In this workers' compensation action, the employee sustained injuries to his right hip, knee, and ankle as a result of a fall while employed as a truck driver. Although he received medical treatment and briefly returned to work, the employee continued to have pain and eventually required knee surgery. After the employee recovered from the surgery, the employer was unable to return him to work. The treating physician assigned a permanent partial impairment of 2% to the right lower extremity. The employee's evaluating physician assigned a 13% impairment rating. The trial court awarded 45.5% permanent partial disability to the right leg. The employer has appealed, asserting that the trial court erred by utilizing the evaluating physician's impairment rating and that the award of benefits is excessive. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Chancery Court Affirmed

DONALD P. HARRIS, SR. J., delivered the opinion of the Court, in which JANICE M. HOLDER, J. and TONY A. CHILDRESS, SP. J., joined.

Stephen K. Heard and Adam O. Knight, Nashville, Tennessee, for the appellant, Cherokee Insurance Company.

David Hardee, Jackson, Tennessee, for the appellee, Jim Singley.

MEMORANDUM OPINION

Factual and Procedural Background

Jim Singley was employed as an over-the-road truck driver for approximately 25 years and worked in that capacity for Reeves Brothers Trucking (“Reeves Brothers”) since 2004. He was 51 years of age, had a ninth grade education, and later obtained his GED. In January 2009, Mr. Singley sustained a work-related injury to his right hip, knee, and ankle when his leg was caught between the cab of his truck and the trailer.

After the accident, Mr. Singley was taken by ambulance to a nearby emergency room where his leg was x-rayed. The emergency room physician diagnosed him as having a sprained hip, knee, and ankle.

Mr. Singley was referred to Dr. John Masterson, an orthopaedic surgeon. Dr. Masterson testified by deposition. He diagnosed the injuries to Mr. Singley’s right hip, knee, and ankle as sprains. After two months, Dr. Masterson released Mr. Singley to return to work with no permanent impairment. Mr. Singley returned to work but found the pain in his leg too severe to perform his job duties. He had difficulty lifting objects and standing for long periods of time.

In May 2009, Dr. Masterson ordered an MRI of Mr. Singley’s knee and hip. The MRI of the hip was unremarkable, but the MRI of the knee indicated a fraying of the meniscus. This was initially treated with injections, but Mr. Singley continued to have pain and crepitus in his knee. Dr. Masterson performed arthroscopic surgery on the knee on August 21, 2009, to repair the meniscus tear. He also performed abrasion arthroplasty of the medial femoral condyle and chondroplasty of the patellofemoral joint. Following the surgery, Mr. Singley continued to complain of pain. In December 2009, Dr. Masterson determined that Mr. Singley had reached maximum medical improvement and released him to return to work. Dr. Masterson testified that Mr. Singley suffered a 2% anatomical impairment to the right lower extremity. Based upon a functional capacity evaluation, Dr. Masterson restricted Mr. Singley from sitting or standing for prolonged periods and from lifting or carrying more than forty-five pounds. Reeves Brothers was unable to accommodate these restrictions, and Mr. Singley’s employment was terminated.

On February 4, 2010, Dr. Apurva Dalal, an orthopaedic surgeon, performed an independent medical evaluation. Dr. Dalal testified by deposition that Mr. Singley had pain and limited range of motion in the right knee as well as effusion or a collection of fluid on the knee. Dr. Dalal also found Mr. Singley had significant bursitis in the right hip, with pain on abduction, internal, and external rotation. In addition, he found Mr. Singley’s ankle to be

mildly tender. Although x-rays showed Mr. Singley's hip was normal, Dr. Dalal found moderate degenerative disease in the ankle and the knee. Dr. Dalal testified that Mr. Singley retained 2% impairment to the right lower extremity for the lateral menisectomy performed by Dr. Masterson, 7% impairment for moderate degenerative arthritis in the knee, 2% impairment for trochanteric bursitis in the right hip, and 2% for the ankle sprain with residual symptoms. According to Dr. Dalal, the arthritis in Mr. Singley's knee and ankle pre-existed the injury but was asymptomatic. The degenerative condition was aggravated by Mr. Singley's injury resulting in the necessity of the arthroscopic surgery and the pick chondroplasty performed by Dr. Masterson and in further permanent impairment. These impairments combined for a total impairment of 13% to the right lower extremity. Dr. Dalal also recommended that Mr. Singley be restricted from lifting more than thirty pounds and avoid prolonged standing, squatting, and sitting. Dr. Dalal testified that Mr. Singley could drive a truck with these restrictions.

After his termination by Reeves Brothers, Mr. Singley found another truck driving job. This new job involves "no touch" freight and requires him to drive approximately half as many hours per day as he did for Reeves Brothers. As a result, Mr. Singley's income has decreased significantly. Mr. Singley testified he can only drive for one to two hours before he begins to experience considerable pain in his knee and hip and it becomes necessary to take a break. Mr. Singley stated that while he has some experience in construction and auto mechanic work, he can no longer perform those jobs because of his lifting and standing restrictions. He can only stand for thirty minutes to an hour before experiencing discomfort. He testified that his hip, knee, and ankle continue cause him pain.

The trial court adopted Dr. Dalal's impairment rating of 13% to the right leg, and awarded permanent partial disability benefits of 45.5% for the right leg. Reeves Brothers has appealed, contending the award is excessive and that the trial court erred by utilizing the rating of Dr. Dalal over that of Dr. Masterson. Mr. Singley filed a complaint for workers' compensation benefits on March 12, 2010. This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. See Tenn. Sup. Ct. R. 51.

Standard of Review

We are statutorily required to review the trial court's factual findings "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2). We accord considerable deference to the trial court's findings of fact based upon its assessment of the testimony of witnesses it heard at trial evaluated in conjunction with

deposition testimony. Cunningham v. City of Savannah, No. W2010-02411-WC-R3-WC, 2012 Tenn. LEXIS 145, at *16 (Tenn. Workers' Comp. Panel Feb. 28, 2012).

Analysis

Impairment Rating

Reeves Brothers contends that the trial court erred by adopting Dr. Dalal's impairment rating. It points out that Dr. Masterson, as Mr. Singley's treating physician, saw Mr. Singley on numerous occasions and performed Mr. Singley's only surgical procedure, treating Mr. Singley from his initial injury through his proposed future care. On that basis, Reeves Brothers contends that Dr. Masterson's opinion should be given greater weight because he was in a better position to assess the employee's medical improvement. Reeves Brothers further asserts that Dr. Dalal's opinion should be given less weight because he only treated Mr. Singley on one occasion more than a year after the injury.

In its findings, the trial court noted that Dr. Dalal is board certified to interpret and give ratings based on the 6th edition of the American Medical Association Guidelines ("AMA Guidelines")¹ and that he is listed on the Tennessee Department of Labor Medical Impairment Registry. Mr. Singley further argues that expert testimony should be considered in conjunction with that of the injured employee. The trial court took note of the physical findings on which Dr. Dalal based his impairment rating. Those findings addressed Mr. Singley's ongoing problems with his hip, ankle, and right knee. In that regard, the trial court found Mr. Singley to be a credible witness and noted that the court "considers his assessment of his physical condition and his disability . . . along with that of the doctors and other proof." See Cunningham v. City of Savannah, No. W2010-02411-WC-R3-WC, 2012 Tenn. LEXIS 145, at *16 (Tenn. Workers' Comp. Panel Feb. 28, 2012) (noting that deposition testimony must be considered in light of employee's lay testimony at trial); see also Uptain Constr. Co. v. McClain, 526 S.W.2d 458, 459 (Tenn.1975).

The trial court found that Dr. Dalal's opinion was entitled to greater weight because it was more consistent with Mr. Singley's credible lay testimony concerning the effects of the work injury upon Mr. Singley's ability to function after the work injury. Having examined the entire record, we agree with the trial court's conclusion in that regard and are unable to determine that the evidence preponderates against the trial court's findings regarding impairment.

¹ Dr. Dalal testified that he was certified by the Medical Board of Independent Medical Evaluators to correctly interpret the 5th and 6th editions of the AMA Guidelines.

Excessive Award

Reeves Brothers also argues that the evidence establishes that Mr. Singley's vocational disability is minimal and that the trial court's award of 45.5% permanent partial disability was, therefore, excessive. Tennessee Code Annotated section 50-6-241(d)(2)(A) (2008 & Supp. 2011) provides that in determining the extent of disability caused by a compensable injury, "the court shall consider all pertinent factors, including lay and expert testimony, the employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition."

Addressing those factors, the evidence demonstrates that Mr. Singley was fifty-one years old at the time of trial. He had a GED but no additional education or specialized training that would be of benefit to him. He had been employed as a truck driver for the majority of his working life. Despite surgical treatment, his knee continued to cause him pain. Mr. Singley's ankle and hip also continued to cause him discomfort. As a result of the restrictions placed on his activities by Dr. Masterson, Mr. Singley lost his job with Reeves Brothers. As found by the trial court, the jobs for which Mr. Singley is suited require full physical ability. He has been able to find other work but is unable to work as many hours and has suffered a significant reduction in his income. Based upon this evidence, we are unable to conclude that the trial court's assessment of Mr. Singley's vocational disability was incorrect.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Cherokee Insurance Company and its surety, for which execution may issue if necessary.

DONALD P. HARRIS, SENIOR JUDGE

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JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellant, Cherokee Insurance Company, and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM